



October 28, 2016

Submitted via Electronic Mail Only to:

Douglas Aburano

EPA Region 5

Aburano.Douglas@epa.gov

RE: Docket ID No. EPA-R05-OAR-2016-0277

Dear Mr. Aburano:

Wisconsin Manufacturers & Commerce (WMC) submits these comments in the above-referenced docket regarding the U.S. Environmental Protection Agency's (EPA) September 28, 2016, proposal to re-classify the Sheboygan area as "moderate" nonattainment for the 2008 National Ambient Air Quality Standard (NAAQS) for ozone. Thank you for your consideration of these comments.

WMC is a business trade organization with nearly 4,000 members statewide of all sizes and throughout all business sectors. Roughly one-fourth of all private sector employees in Wisconsin work for a WMC member company. WMC members have a substantial interest in Wisconsin ozone designations. Our primary interest relates to economic ramifications for those areas designated as nonattainment.

The Sheboygan area consists of Sheboygan County, Wisconsin. Sheboygan County is located on Lake Michigan approximately 55 miles north of Milwaukee and 140 miles north of Chicago.¹ The county is home to just over 115,000 Wisconsinites.² Sheboygan County's largest municipality and seat of government, is the City of Sheboygan, which has a population of just under 50,000.³

For the reasons stated herein, re-classification of Sheboygan County to moderate is inappropriate at this time and EPA should hold off on any action until the State of Wisconsin has had the opportunity to provide more complete air monitoring data.

I. A POORLY PLACED AIR QUALITY MONITOR HAS SUBJECTED THE COUNTY TO YEARS OF UNNECESSARILY HEIGHTENED REGULATORY BURDENS

¹ VisitSheboygan.com, "About us." Available at: <http://visitsheboygan.com/about/>

² U.S. Census Bureau, "QuickFacts: Sheboygan County, Wisconsin." Available at: <http://www.census.gov/quickfacts/table/PST045215/55117,00>

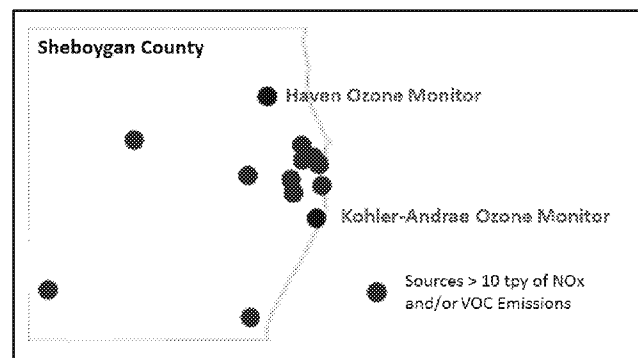
³ U.S. Census Bureau, "QuickFacts: Sheboygan city, Wisconsin." Available at: <http://www.census.gov/quickfacts/table/PST045215/5572975,00>

- a. The State of Wisconsin operates two air quality monitors in Sheboygan County, but EPA is exclusively using data from just one monitor – the one that does not measure the primary impact of Sheboygan County emission sources.

Sheboygan County has been forced to deal with an excessive regulatory burden due to factors largely beyond its control. The State of Wisconsin has located two air quality monitors in the county. The first, located at Kohler-Andrae State Park (Site ID 551170006) along Lake Michigan, approximately 6 miles south of the City of Sheboygan, has been operational since June of 1997. This monitor is **upwind** from the City of Sheboygan. The second air quality monitor, known as the Haven monitor (Site ID 551170009), is located approximately 6 miles northwest of the City of Sheboygan and has been operational since April of 2014. This monitor is **downwind** from the City of Sheboygan. EPA's proposed nonattainment re-classification is based exclusively on data provided by the Kohler-Andrae monitor.

Facilities in Sheboygan County that emit the majority of ozone precursor emissions, namely nitrogen oxides (NO_x) and volatile organic compounds (VOC), are located **downwind** from the Kohler-Andrae ozone monitor. The following figure shows the location of facilities with greater than 10 tons per year (tpy) of NO_x and/or VOC emissions based on EPA's 2014 National Emissions Inventory (NEI).⁴ These same facilities are the ones that may be subject to increased regulations due to EPA's proposal to re-classify this area to a moderate nonattainment area, even though they are not likely contributing on days with higher ozone concentrations. This is because days with higher ozone concentrations typically occur when the winds are from the south, followed by an afternoon lake breeze.

Figure 1.1 – Ozone Precursor Point Sources in Sheboygan County:



- b. Relying exclusively upon the Kohler-Andrae monitor for attainment decisions does not give an accurate or complete picture of the air quality in Sheboygan County

The ozone being detected by the Kohler-Andrae monitor, and potentially subjecting Sheboygan County to a more stringent nonattainment classification as proposed by EPA, likely does not come from facilities located in Sheboygan County. In fact, source apportionment modeling from the Lake Michigan Air Directors Consortium (LADCO) has suggested that **all of the sources in**

⁴U.S. Environmental Protection Agency, "2014 NEI Data." Available at: <https://www.epa.gov/air-emissions-inventories/2014-nei-data>

the entire State of Wisconsin contribute less than 10% of the ozone being detected.⁵ Given the location of the primary ozone precursor emission sources in Sheboygan County relative to the Kohler-Andrae monitor, as discussed *infra*, it is very likely that Sheboygan County facilities contribute a minimal amount to the state's overall contribution.

- c. In relying exclusively on data from the Kohler-Andrae monitor, EPA is acting contrary to their own policies

Relying upon the Kohler-Andrae monitor to make ozone attainment decisions for Sheboygan County is contrary to EPA's ozone compliance monitor site selection guidance. According to EPA's guidance on monitoring site selection, "For regulatory compliance, the principle objective is to measure the ozone concentration in the high population density areas and the maximum downwind concentration from the urban region."⁶

The Kohler-Andrae monitor is not located downwind from sources in Sheboygan County. The monitor's location in no way could be seen as measuring ozone concentration in an area with the maximum downwind concentration from the urban region.

II. RECOGNIZING THE INADEQUACIES OF THE KOHLER-ANDRAE MONITOR, THE STATE OF WISCONSIN ESTABLISHED A SECOND AIR QUALITY MONITOR AT A LOCATION DESIGNED TO MEASURE THE ACTUAL AIR QUALITY WITHIN SHEBOYGAN COUNTY

- a. The Haven monitor meets EPA's guidelines for locating a compliance monitor

As noted above, Wisconsin established the Haven monitor in Sheboygan County in 2014. This monitor's location makes it a much more appropriate monitor to use for compliance with ozone standards. The Haven monitor is placed in a location that will actually monitor ozone generated from Sheboygan County facilities – making its data much more valuable for determining compliance.

- b. Data from the Haven monitor shows Sheboygan County is well within compliance with the 2008 Ozone Standard

Based on 2014-2016 data from the Wisconsin Department of Natural Resources⁷, the design value for the Haven monitor would be .069 parts per million (ppm), well within attainment for the 2008 ozone standard of 0.075 ppm. A comparison of the air quality data from the Kohler-Andrae and Haven monitors in Sheboygan County is contained in the table below:

⁵ See Lake Michigan Air Directors Consortium, "White Paper: Lake Michigan Ozone Study 2017." Available at http://ladco.org/reports/ozone/post08/Great_Lakes_Ozone_Study_White_Paper_Draft_v6.pdf, stating: "LADCO source apportionment modeling studies suggest that Wisconsin contributes to less than 10% of the ozone at Sheboygan (Figure 5), significantly limiting the state's options to reduce ozone concentrations at this site" (Page 7).

⁶ U.S. Environmental Protection Agency, "GUIDELINE ON OZONE MONITORING SITE SELECTION." EPA-454/R-98-002, August 1998, Section 4.3.1.

⁷ Wisconsin Department of Natural Resources, "Air Quality Reports." Available at: <https://dnrx.wisconsin.gov/wisards/webreports/generateAdvancedReports.do>

Area	County	Monitor	2013 4 th Highest	2014 4 th Highest	2015 4 th Highest	2016 4 th Highest	2013-15 Average	2014-16 Average
Sheboygan, WI	Sheboygan	Kohler-Andrac	.078	.072	.081	.085	.077	.079
Sheboygan, WI	Sheboygan	Haven	n/a	.068	.067	.074	n/a	.069

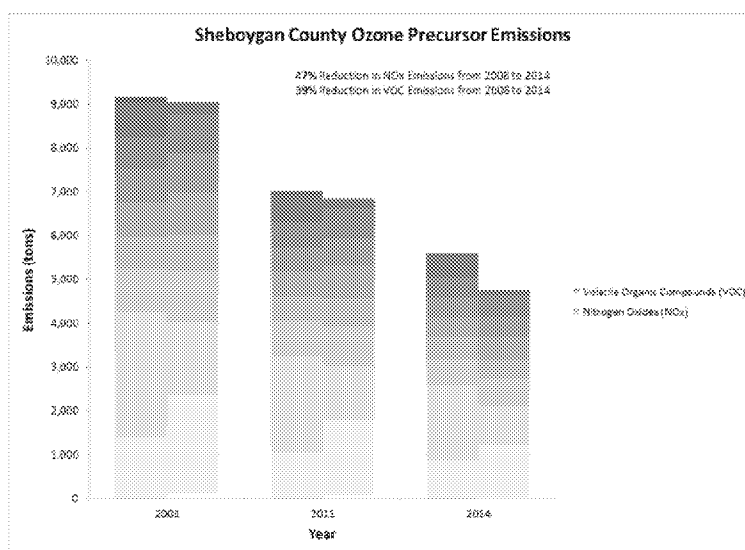
This data shows that actual air quality within Sheboygan County is in compliance with the 2008 ozone standard. The ozone from upwind sources being detected by the Kohler-Andrac monitor is not representative of the entire county, and should not be used to make a regulatory determination that unfairly subjects Sheboygan County to a regulatory burden meant to alleviate a problem that facilities in the county did not create.

Accordingly, EPA should hold off on any re-classification of Sheboygan County until the State of Wisconsin has had the opportunity to certify the most recent data from the Haven monitor and a design value can be assigned. EPA should make re-classification decisions using all data available.

III. SHEBOYGAN COUNTY HAS MADE SIGNIFICANT PROGRESS REDUCING OZONE PRECURSOR EMISSIONS ONLY TO BE SUBJECTED TO INCREASED REGULATORY REQUIREMENTS.

EPA's proposed action to re-classify Sheboygan County fails to adequately recognize the significant emission reductions that have been made to date and the sources of emissions in the county. Since 2008, ozone precursor emissions have declined dramatically in Sheboygan County based on data from EPA's NEI.⁸ As shown in the following figure, NOx emissions have declined **47%** and VOC emissions have declined **39%** from 2008 to 2015.

Figure 1.2 – Ozone Precursor Emission Reductions in Sheboygan County:



⁸ U.S. Environmental Protection Agency, "2014 NEI Data." Available at: <https://www.epa.gov/air-emissions-inventories/2014-nei-data>

IV. AT THE VERY LEAST, EPA SHOULD CONSIDER RE-CLASSIFYING ONLY PART OF SHEBOYGAN COUNTY

The State of Wisconsin has worked with EPA in the past to address the issue of an upwind compliance monitor unfairly subjecting an entire county to a nonattainment designation in Kenosha County. At the very least, EPA should consider changing the geographic boundaries of the Sheboygan nonattainment area to exclude those portions of the county which are clearly in attainment according to the data from the Haven monitor.

Given past precedent, it would be appropriate for EPA to consider such a solution for Sheboygan County as well. Wisconsin has invested significant resources in establishing a second monitor to gather more accurate air quality data for the area and show the actual impact from Sheboygan County facilities. To ignore the data from the Haven monitor is to needlessly hold facilities in Sheboygan County accountable for pollution they did not generate, and that the State of Wisconsin cannot control.

Re-classifying only part of Sheboygan County would allow for more regulatory certainty for businesses and residents of the area, as well as provide a more fair and appropriate regulatory solution than holding the entire county accountable as the air quality data clearly shows substantial attainment with the 2008 standard in large portions of the county.

V. THE TIMELINE PROPOSED BY EPA FOR THE STATE OF WISCONSIN'S STATE IMPLEMENTATION PLAN (SIP) REVISION IS IMPRACTICAL

- a. Requiring Wisconsin to develop and submit a SIP to EPA in as little as one month is unfair and impractical

As noted *infra*, emission sources in the entire State of Wisconsin contribute less than 10% of the ozone monitored in Sheboygan County. Asking the State of Wisconsin to develop a SIP that would have the area reach attainment is impractical, and asking them to complete that task by January 1, 2017, is unfair and next to impossible. Areas originally designated as moderate ozone nonattainment areas in 2012 had **3 years** to develop several moderate area SIP requirements, such as the 15 percent Rate of Progress (ROP) plans and attainment demonstrations, per Clean Air Act Section 182(b)(1). In May, 2016, EPA re-classified 11 areas across the country from marginal to moderate nonattainment areas. Even these areas were afforded at least **6 months** to develop necessary SIP requirements, which EPA recognized would be challenging.⁹ EPA stated the following: "The EPA acknowledges that for some states with Moderate nonattainment areas reclassified from Marginal, meeting this SIP submittal deadline may be challenging. The EPA is committed to working closely with these states to help them prepare their SIP revisions in a timely manner." If EPA finalizes their proposal to re-classify Sheboygan County, it will likely not do so until November or even December 2016. This would allow the State **1 – 2 months** to develop the required moderate area SIP elements. We ask EPA to use its discretion afforded in

⁹ Federal Register, Volume 81, Number 86 (Wednesday, May 4, 2016). Available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-05-04/html/2016-09729.htm>

Clean Air Act Section 182(i), which states the following:

“Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.”

At the very least, given the air quality data now available, EPA should extend the timeline to give the State of Wisconsin additional opportunities to develop strategies that will help Sheboygan County deal with the enhanced regulatory burden associated with a moderate nonattainment designation.

- b. The timeline to achieve attainment is impossible to meet, and this re-classification will have no environmental impact

EPA’s federal register notice states “Moderate nonattainment areas are required to attain the standard ‘as expeditiously as practicable’ but no later than six years after the initial designation as nonattainment (which, in the case of the Sheboygan area, is **July 20, 2018**)”¹⁰ (emphasis added).

This requirement means the State of Wisconsin is expected to develop a SIP that will get Sheboygan County in attainment with only one year of ozone emissions implementing that SIP. This would require the fourth highest ozone value for 2017 to be at or below 0.059 ppm. This would require ozone values to fall below background levels – and absolutely no action available to either the State of Wisconsin or EPA could achieve such a result.

EPA is requiring the State of Wisconsin to undergo a time consuming SIP drafting effort in an extremely limited timeframe with no possibility of success. This requirement is as impractical as it is unfair.

CONCLUSION

For nearly twenty years EPA has allowed a poorly placed compliance monitor to hold Sheboygan County accountable for pollution generated elsewhere. The State of Wisconsin has invested in a second monitor specifically to provide accurate air quality data for Sheboygan County which shows compliance with air quality standards.

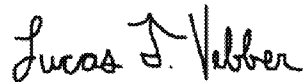
For the reasons stated herein, EPA should hold off on any regulatory action until it can appropriately consider this new monitor’s data and use it to provide appropriate and necessary regulatory relief to the people and businesses of Sheboygan County.

¹⁰ Federal Register, Volume 81, Number 188 (Wednesday, September 28, 2016). Available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-28/pdf/2016-23294.pdf>

Thank you again for your time and consideration of these comments. We look forward to working with the State of Wisconsin and EPA to help find solutions to these issues and develop ways to achieve positive environmental outcomes that allow for continued economic growth for our state.

Should you have any questions regarding these comments please contact me at (608) 661-6910. We would also welcome the opportunity to meet with EPA staff and discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "Lucas J. Vebber". The signature is written in a cursive, slightly slanted style.

Lucas Vebber
Director, Environmental & Energy Policy
Wisconsin Manufacturers & Commerce

cc: Governor Scott Walker
Attorney General Brad Schimel
Secretary Cathy Stepp
U.S. Senator Tammy Baldwin
U.S. Senator Ron Johnson
Congressman Glenn Grothman
State Senator Devin LeMahieu
State Senator Duey Stroebel
State Representative Terry Katsma
State Representative Jesse Kremer
State Representative Tyler Vorpapel
Sheboygan County Board Chair Thomas Wegner